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New York Tax Reform Association

Amendments to the law providing for the local...

New York

[1903]

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# AMENDMENTS

*To the Law Providing for the*
Local Assessment and Taxation
*of the Capital Stock of*
Domestic Corporations

PROPOSED (1903) by the New
York Tax Reform Association

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# AMENDMENTS

## *To the Law Providing for the* LOCAL ASSESSMENT AND TAXATION *of the Capital Stock of* DOMESTIC CORPORATIONS

*Proposed by*

The New York Tax Reform Association

1903

NEW YORK TAX REFORM ASSOCIATION
52 William Street
New York

The Trow Press
New York

mts - 21 Aug - 16

# Assessment of the Capital Stock of Domestic Corporations.

DOMESTIC corporations are assessed for taxation under Section 12 of the Tax Law. This section was enacted in substantially its present form in 1855; since then conditions have so changed that there is a serious discrimination against domestic corporations as compared with foreign corporations, greatly to the disadvantage of the City and State of New York.

A bill to amend this section was prepared by the New York Tax Reform Association and introduced at the last session of the Legislature by Senator Green, Chairman of the Committee on Taxation of the Senate. A bill to amend Sections 27 and 31 of the Tax Law, which provide for the annual report of such corporations and for their assessment, was also introduced by Senator Green.

These bills finally received the approval of the State Comptroller and were reported by the Committee on Taxation, but too late to be passed. Senator Green is heartily in favor of the amendments and will introduce the same bills early in the next session, when we have good reason to hope that they will become law.

The present Section 12 was characterized by Judge Earl, in an opinion, as "an extraordinary confusion of terms." Our amendment codifies the decisions so that the statute can be more easily understood, and those not learned in the law will be more likely to procure a just assessment. The amendment really makes only one change, and that is that it allows so much of the credits of the corporations to be deducted from the total of its property subject to taxation as shall equal the proportion of its tangible property outside the State, and applies the same principle to the deduction of debts. Now that so large a part of the business of the country is carried on by corporations whose property is situated in many States, it is a manifest injustice that all the credits and bills receivable of such corporations should be taxed at the home office of the company. Both in fairness to the corporation and to the State in which it does business its intangible property, if taxed at all, should be taxed in each State in proportion to the tangible property therein situated.

A number of corporations have been compelled to withdraw from this State and reincorporate elsewhere because of the severe burden of local taxation due entirely to the taxation of all their credits at their home office. If this amendment is adopted a corporation will be taxed here upon so much of its credits as are in proportion to the tangible property here, and can deduct a like proportion of its debts. In the opinion of eminent lawyers with large corporation practice the adoption of this amendment will establish a fair rule for the taxation of corporate property, and will result in the investment in domestic corporations of many times as much capital as will be so invested under the present law.

The State will gain organization and franchise taxes; the large cities will gain in local taxes; real estate owners will be benefited by greater numbers of tenants seeking offices; banks will receive increased deposits which cannot now be deposited in this State because of taxation. No revenue that is now obtained will be lost because few large corporations with property in many States are now incorporated under the laws of New York.

The amendment to Section 27, which provides the form for the reports required to be made by corporations, greatly simplifies the report. The amended report, when made by an officer of a corporation, will show exactly the amount for which the corporation should be assessed instead of leaving the final sum to be computed by the assessors. As the law now stands there is no certainty that the assessor will make the computation correctly, and the assessment may be higher than is justified by the facts.

The bills in the form in which they were reported by the Committee on Taxation this year and as they will be presented next year are printed on the following pages. Immediately after the bills there is a memorandum giving the reasons for each change made by the amendments.

LAWSON PURDY,
*Secretary*

## From the Report of the Special Committee upon Taxation of the Association of the Bar of the City of New York.

Accepted March 10, 1903.

. . . Domestic corporations are under a listing system and are assessed under a confused and antiquated law. We commend the purpose of the bills introduced by Senator Green in the present Legislature amending Sections 12, 27 and 31, of the tax law. These bills will, if enacted, place domestic corporations on about the same basis as foreign corporations, and make the law much clearer and more easily understood. . . .

HENRY DE FOREST BALDWIN,
HORACE E. DEMING,
EDWARD L. HEYDECKER,
W. M. K. OLCOTT,
FERDINAND SHACK.

## Report of the Finance Committee of the New York Board of Trade and Transportation.

Adopted February 4th, 1903.

We approve and recommend the passage of bills introduced by Senator Green, Senate Bill No. 144, amending Section 12 of the tax law relating to the taxation of the capital stock of domestic corporations, and Senate bill No. 143, amending Sections 27 and 31, of tax law in relation to the mode of assessment of domestic corporations. As the law now stands, all the bills receivable of a domestic corporation are taxed here. So long as all the property of a corporation was in one State, this was no greater hardship upon corporations than upon individuals. Now that corporations own property in many States it is impossible for them to incorporate in New York under existing law, and with the result that they incorporate in other States and to the detriment of New York. The amendment provides that they shall be taxed only on the same proportion of their bills receivable as they have tangible property in this State.

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## Bill prepared by
## New York Tax Reform Association.

## AN ACT

**To amend Section 12 of the Tax Law relating to the taxation of the capital stock of domestic corporations.**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section 12 of the Tax Law is hereby amended to read as follows:

[§ 12. Taxation of corporate stock.—The capital stock of every company liable to taxation except such part of it as shall have been excepted in the assessment roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value.]

§ 12. Taxation of capital stock of domestic cor-

**EXPLANATION.—Matter underscored ___________ is new; matter in brackets [ ] is old law to be omitted.**

porations.—Such portion of the capital stock of every domestic corporation as is liable to taxation in this State shall be assessed at its actual value. Such portion of the capital stock of every domestic corporation and the actual value thereof shall be determined in the following manner: From the actual value of the real and personal property of the corporation there shall be deducted:

1. Such part of the real and personal property as shall be exempt by law.

2. So much of the surplus, if any, as shall not exceed ten per centum of the par value of the shares of stock issued.

3. The assessed value of the corporation's real estate in this State.

4. The value of its real estate outside of this State.

5. The value of its tangible personal property having a situs outside of this State.

6. Such proportion of its moneys, things in action and debts due from solvent debtors whether on account, contract, note, bond or mortgage, as shall equal the proportion which the aggregate value of its real estate and tangible personal property having a situs outside this State bears to the aggregate sum of the assessed value of its real estate in this State, the value of its real estate

outside this State, and of its tangible personal property wherever situated.

7. Such proportion of the aggregate indebtedness of the corporation not contracted or incurred in the purchase of non-taxable property or securities as shall equal the proportion which the assessed value of its real estate and the value of its tangible personal property in this State bears to the aggregate sum of the assessed value of its real estate in this State, the value of its real estate outside of this State, and of its tangible personal property wherever situated.

8. All shares of stock in other corporations actually owned by such corporation, which are taxable upon their capital stock.

§ 2. This act shall take effect immediately.

## Bill prepared by
## New York Tax Reform Association.

# AN ACT

**To amend sections twenty-seven and thirty-one of the Tax Law in relation to the mode of assessment of domestic corporations.**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section twenty-seven of the Tax Law is hereby amended to read as follows:

§ 27. Reports of corporations.—The president or other proper officer of every [moneyed or stock] domestic corporation [deriving an income or profit from its capital or otherwise,] liable to taxation under section twelve of this chapter, shall, on [or before June fifteenth,] the written demand of the assessors or other officers performing the duties of assessors, deliver to one of the assessors of the tax district in which the [company] corporation is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the state, a written statement specifying:

[1. The real property, if any, owned by such company, the tax district in which the same is situated, and, unless a railroad corporation, the sums actually paid therefor.]

[2. The capital stock actually paid in and secured to be paid in excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and,]

[3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.]

1. The par value of the shares of stock issued.

2. The value of the real and personal property of the corporation.

3. Such part of the real and personal property of the corporation as shall be exempt by law.

4. So much of the surplus, if any, as shall not exceed ten per centum of the par value of the shares of stock issued.

5. The assessed value of the corporation's real estate in this state.

**EXPLANATION.—Matter underscored____________ is new; matter in brackets [ ] is old law to be omitted.**

6. The value of its real estate outside this state.

7. The value of its tangible personal property having a situs outside of this state.

8. Such proportion of its moneys, things in action, and debts due from solvent debtors whether on account, contract, note, bond, or mortgage, as shall equal the proportion that the aggregate value of its real estate and tangible personal property having a situs outside of this state bears to the aggregate sum of the assessed value of its real estate in this state, the value of its real estate outside this state, and of its tangible personal property wherever situated.

9. Such proportion of the aggregate indebtedness of the corporation not contracted or incurred in the purchase of non-taxable property or securities as shall equal the proportion which the assessed value of its real estate and the value of its tangible personal property in this state bears to the aggregate sum of the assessed value of its real estate in this state, the value of its real estate outside of this state, and of its tangible personal property wherever situated.

10. All shares of stock in other corporations actually owned by such corporation, which are taxable upon their capital stock.

11. The aggregate of the items set down in answer to paragraphs three, four, five, six, seven, eight, nine, and ten.

12. The difference between the value of the real and personal property of the corporation and the aggregate sum set down in answer to paragraph eleven.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after [the fifteenth day of June,] demand in writing, or is insufficient, evasive, or defective, the assessors may compel the corporation to make a proper statement by mandamus.

SECTION 2. Section thirty-one of the tax law is hereby amended to read as follows:

§ 31. Corporations how assessed.—The assessors shall assess corporations liable to taxation under section twelve of this chapter in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation. [and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per

centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary or charitable institutions.]

2. In the second column the quantity of real property except special franchises owned by such corporations and situated within their tax district.

3. In the third column the actual value of such real property except special franchises.

4. In the fourth column [the amount of the capital stock paid in and secured to be paid in, and of all such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.] the value of such portion of the capital stock as is liable to taxation in this state determined as required by section twelve.

5. In the fifth column the value of any special franchise owned by it as fixed by the state board of tax commissioners.

SECTION 3. This act shall take effect immediately.

## Memorandum as to the Amendment to Section 12 of the Tax Law.

Under the present law all the intangible property of a domestic corporation is subject to taxation at its home office, even though the major part of its property may be located outside this State.

The mischief to be remedied is the taxation of all the intangible property of a domestic corporation which has property outside the State. This prevents incorporation under our law by large corporations doing business in several States. The remedy is to assess for taxation in this State only so much of the intangible property as shall be in proportion to the tangible property in this State.

The mischief of the old law has assumed grave importance only within recent years. So late as 1887 Chief Justice Andrews in rendering the opinion of the Court of Appeals in the case of the Panama R. R. (104 N. Y., 249), said that this statute operated harshly and unequally because the railroad had most of its property outside the State on the Isthmus of Panama, but that the statute would usually be just and equitable because the property of corporations was ordinarily all within this State. To-day a large and increasing part of the business of the country is done by corporations whose property is situated in many States.

The change made by the amendment in the form of the old law is for the sake of clearness, and changes the law itself only in respect to the taxation of intangible property, deduction of debts, and the striking out of the exemption of such part of the capital stock as is excepted in the assessment roll. Judge Earl says that he knows of no provision of law authorizing any exception in the assessment roll. (23rd St. R. R. *vs.* Comm'ners, 95 N. Y., 557.) If there is any provision of law such as that now contained in paragraph two of Section 27 and paragraph one of Section 31 excepting the amount of the capital stock held by the State and by any incorporated literary or charitable institution it is clearly an improper and unfair exception. If the State or a charitable institution owns stock in a corporation, there is no reason why the property of that corporation should not be taxed the same as the property of any other corporation of

like kind. The exemption does not appear to inure to the benefit of the State or to the charitable institution alone, but pro rata to all stockholders. There are probably few such cases. For this reason this deduction is omitted.

The words " domestic corporations " are used in place of the phrase " every corporation," as this section does not apply to foreign corporations. (N. Y. Milk Products Co. *vs.* Damon, 57 App. Div., 261.)

### Explanation of rule for determining assessable portion of capital stock.

" From the value of the real and personal property of the corporation there shall be deducted :

" 1. Such part of the real and personal property of the corporation as shall be exempt by law."

The words " real and personal property of the corporation " are used in defining the gross assets of the corporation. They do not include good-will and perhaps the value of copyrights, patent rights, and trade-marks. It is to be noticed, therefore, that the first deduction is framed in the same language, and if these items of property are not included in the gross assets they are, therefore not deductable. As a matter of fact they are not taxable. Good-will is not taxable. (Union Trust Co. *vs.* Coleman, 126 N. Y., 433. Cornell S. Co. *vs.* Dederick, 161 N. Y., 195.) Patent rights and copyrights are not taxable. (Edison Co. *vs.* Assessors, 156 N. Y., 417. Johnson Co. *vs.* Roberts, 159 N. Y., 70.) There is other property exempt by law, and the words of this first deduction are the same, with the exception noted above, as are contained in the present statute.

"2. So much of the surplus, if any, as shall not exceed ten per centum of the par value of the shares of stock issued."

This deduction from the surplus, if any, is ten per centum of the par value of the shares of stock. (23rd St. R. R. Co. *vs.* Comm'ners, 95 N. Y., 554.)

"3. The assessed value of the corporation's real estate in this State."

This follows exactly the existing law.

"4. The value of its real estate outside of this State."

Under existing law, if the real estate is in another tax district the assessed value may be

deducted if known, otherwise the actual value is to be deducted. (Fairfield Chemical Co. *vs.* Coleman, 115 N. Y., 178; 95 N. Y., 554.) It is obvious that great injustice might arise by deducting the assessed value of real estate in certain foreign States where assessments are made at a very small proportion of true value.

"5. The value of its tangible personal property having a situs outside of this State."

This deduction follows the decisions as to the effect of the existing law. (United Verde Copper Co. *vs.* Feitner, 54 App. Div., 217. Aff., 165 N. Y., 645, on opinion below. Kursheedt Mfg. Co. *vs.* Feitner, 32 Misc., 84. The decisions are collated in this opinion.)

6. This item to be deducted changes the law for the reasons heretofore given. The language defining intangible personal property is taken from the definition of personal property and is substantially all of that definition omitting the word "chattels," which is the only word signifying tangible property. The effect of this item is to divide the intangible property of the corporation, including its money, in proportion to its tangible property, and to tax here the

same proportion of intangible as tangible property.

7. All the indebtedness of the corporation may now be deducted from its gross assets. If only that part of its intangible property is to be taxed which is in proportion to the tangible property here it seems that only the corresponding proportion of indebtedness should be deducted, and the seventh item, therefore, only permits a deduction of indebtedness in proportion to the tangible property within this State.

"8. All shares of stock in other corporations actually owned by such corporation which are taxable upon their capital stock."

This is the same language as that employed in the existing law, except that the words "under the laws of this State" are omitted, thus making the language identical with that used in paragraph Sixteen of Section 4, which provides that "the owner or holder of stock in an incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock." This provision has been held to apply to a corporation. (Keppler *vs.* Barker, 22 App. Div., 120. Aff., 155 N. Y. Trowbridge *vs.* Comm'ners, 62 N. Y., 630.)

## Amendment to Sections 27 and 31 relating to the reports of corporations and the mode of assessment.

Sections 27 and 31 are amended so as to conform to the amendment to Section 12. These sections only apply to domestic corporations liable to taxation under Section 12, and for the sake of clearness this distinction is carried out in the form of the amendment. The report was required to be made on or before June 15th, and it seems that it was not necessary for corporations to make the report in places where their condition on June 15th was not material. No report is required by the Charter of the City of New York. In order to cover the places in the State without regard to the date of assessment the report is required to be made on the written demand of the assessors.

At the end of the section it is now provided that if the statement is not made within twenty days after June 15th the assessors may compel a proper statement by mandamus. The words "the 15th day of June" are changed to "demand in writing." Section 28 of the Tax Law provides that if the statement is not furnished within thirty days after the time above provided, the company is liable to a penalty of $250. No change is necessary in this section and it remains applicable. The old report was incomplete and unsatisfactory at best. The report required by the amendment is in such form that the corporation will be obliged to state the value of the real and personal property of the corporation, each item to be deducted, the aggregate sum to be deducted, and the difference between the value of the real and personal property of the corporation and the aggregate sum to be deducted. This difference will be the assessed value of such portion of the capital stock as is liable to taxation.

Section 31, which provides the mode of assessment, is amended so as to harmonize Section 31 with Section 12. The provisions now found in paragraph one were inconsistent with Section 12 and of no force. (Cornell S. Co. *vs.* Dederick, 161 N. Y., 208.) The amendment requires the assessment to be made in the form stated by Judge Earl. (23rd St. R. R. Co. *vs.* Comm'ners, 95 N. Y., 554.)

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